THE HONOURABLE SRI JUSTICE C.Y.SOMAYAJULU

Writ Petition No. 934 of 2005

%01.04.2005

#M/s. Aashrith Hotels, Rep.by G. Praveen Rao, Managing Partner, Plot No.237/A, Road No.36, Jubilee Hills, Hyderabad.
…Petitioner

Vs.

$The Assistant Medical Officer of Health, Circle No.V, West Zone, MCH, Hyderabad.

…Respondent

Counsel for the Petitioner: MR.V.PATTABHI

Counsel for the Respondent: GP FOR MUNICIPAL ADMN. &
URBAN DEV.

<Gist :

>Head Note:

? Cases referred:

1. (2001) 3 SCC 646

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO: 934 of 2005

Between:

M/s. Aashrith Hotels, Rep. by G. Praveen Rao, Managing Partner, Plot No. 237/A, Road No. 36, Jubilee Hills, Hyderabad 500 033.

..... PETITIONER

AND

The Assistant Medical Officer of Health, Circle No. V, West Zone, MCH, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to grant a Writ, Direction or Order one more in the nature of a Writ of Mandamus or any other appropriate writ, declaring the impugned Orders No.4146/H/ MCH/2004/3457 dtd. 6th Dec. 2004 issued by the Assistant Medical Officer of Health, Circle No.V, West Zone, MCH, Hyderabad, the respondent herein as arbitrary, illegal and unlawful and set aside the same and consequentially direct him to pass appropriate orders as per law and as per the realities of the case, on the petitioner's application dtd. 16th August 2004 for issuance of a NOC for setting up of a bar in its running restaurant premises, and pass such other further orders.

Counsel for the Petitioner: MR.V.PATTABHI

Counsel for the Respondent: GP FOR MUNCIPAL ADMN. & URBAN DEV.

The Court made the following:

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THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION No.934 of 2005

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ORAL ORDER:

Petitioner, who is running a restaurant under the name and style of '36 Jubilee Hills Multi Cuisine Restaurant' at road No.36, Jubilee Hills, Hyderabad, with an intention to open a Bar also therein, made an application for a 'No Objection Certificate' (NOC), as contemplated by the A.P. Excise Act, 1968 (the Act), to the Municipal Corporations Act. Respondent, by his proceedings No.4146/H/CV/MCH/ 2004/3475 dated 06-12-2004 informed the petitioner that its request to open a Bar & Restaurant at Plot No.237/A, Road No.36, Jubilee Hills, Hyderabad, is rejected since

establishment of a Bar is not permissible in a residential area. The said order is impugned in this petition.

2. The contention of the learned counsel for the petitioner is that since NOC from the respondent is required only to find out if the applicant can be given a trade licence or not, and since question of granting permission in residential area for running a Bar is exclusively in the jurisdiction of the authorities under the Act, respondent refusing to issue NOC, on the ground that the premises of the petitioner is in a residential area, without taking into consideration A.P. Indian Liquor and Foreign Liquor Rules, 1970 (the Rules), which enable Excise authorities granting Bar licences in residential areas, if the requirements mentioned therein are satisfied, is arbitrary and so the same is liable to be set aside. He relied on **A.P. BANKERS & PAWN BROKERS' ASSOCIATION v MUNICIPAL CORPORATION OF HYDERABAD** where the Apex Court held that the purpose of Section 521 of Hyderabad Municipal Corporation Act, 1955, is to ensure that the Commissioner is in a position to regulate the trade or operation or to prevent things from being kept except on certain terms and conditions, which may be fixed by the licence, and if there are no terms and conditions which can be imposed by the Commissioner or the Municipality in respect of a particular trade or operation, then even if the Commissioner is of the opinion that that the trade or operation is dangerous to life or health or property or that it is likely to create a nuisance, he would not be able to regulate or control that trade or operation and so insistence on getting a licence, in such a case, would be a useless formality and would not be authorized by Section 521 and contends that since the business of dealing in Alcohol Beverages and running of Bars, is exclusively in the purview of the Excise authorities and is governed by the provisions of the Act, respondent rejecting the application of the petitioner, without keeping in view the provisions of the Act and the Rules is liable to be set aside.

3. The contention of the learned standing counsel for the Municipal Administration, appearing for the respondent, is that since Zoning Regulations 1981, lay down the duties and responsibilities of the technical personnel and others and since running of a Bar in a residential area is not contemplated by the Zoning Regulations, 1981, and they permit only certain types of businesses being carried out in residential localities, and since the petitioner is seeking to open a Bar in an area which is

purely residential, action of the respondent in refusing to issue NOC is proper and as such business is not permitted, by the Zoning Regulations, in residential area there are no grounds to interfere with the orders passed by the respondent.

4. Rule 29 of the Rules, which deals with the restrictions on the grant of certain licences, reads-

> "A licence in Forms IL.17, IL.17A, IL.17B, (except for beer Pubs in boats run by A.P. Tourism Development Corporation Limited IL.19, IL.20, IL.21, IL.22) involving consumption of liquor at the premises shall not granted:
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> (i) unless the premises has:
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> (a) a minimum plinth area of 25 Sq.metres:
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> .....
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> (ii) Within 100 metres from educational institution recognized by the Government, places of public worship such as Temples registered by the Endowments Departments, Mosques registered with the Wakf Board Churches and Hospitals provided that in the limits of Municipal Corporations the distance restriction mentioned above shall be 50 metres.
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> .....
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> (iii) within 500 metres of predominantly residential areas but licences may however be sanctioned if the proposed bar premises is located on a main road used for shopping purposes provided that the above restriction shall not be applicable to clubs and Star Hotels (3 Star and above) and the Star Hotels should be certified by the Tourism Department of the State or Central Government.
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> ....."

From the above Rule, it is clear that if conditions mentioned therein are satisfied, opening of Bars, even in residential areas, is permitted. Therefore, prima facie, the assumption of respondent, that opening of a Bar is not permissible in residential area is not, and cannot be true in view of rule 29 of the Rules.

5. The fact that the Zoning Regulations, 1981, are mute about establishment of Bars or liquor shops in residential areas may not be a ground for the respondent denying NOC to the petitioner on the ground that Bars cannot be established in a residential area, because he is not the person concerned

with the issue of Bar licence, and since such discretion is exclusively within the purview of the officials under the Act, Authorities under the Act, but not the respondent, are the persons that have to take a decision if Bar licence can be granted to the petitioner or not. In fact, as per Regulation No.6 of Zoning Regulations, 1981, the zones are divided into six categories as-

I. Residential;

II. Commercial;

III. Industrial;

IV. Recreational;

V. Agricultural (Green);

VI. Special Reservation.

Running of Bar and Restaurant is a commercial activity. It is not the case of respondent that there are no liquor shops in Road No.36, Jubilee Hills, and that the petitioner's application is the only application till now for opening of a Bar. The fact that there are liquor shops in several residential areas in Hyderabad is well known. In spite of the Zoning Regulations not stating anything about bars and liquor shops, the fact that several liquor shops and bars are running in residential areas in Hyderabad shows that NOCs were issued by the respondent to some other persons earlier for opening liquor shops, even in residential areas also. So, respondent refusing to issue NOC to the petitioner on the assumption that running of a Bar in a residential area is not permissible, without taking into consideration the provisions of the Act and Rules, is improper.

6. Therefore, proceedings No.4146/H/CV/MCH/2004/ 3475 dated 06-12-2004 issued by the respondent are set aside. Respondent is directed to consider the application of the petitioner in the light of the provisions of the Act and the Rules and pass appropriate orders thereon within a period of one month from the date of receipt of a copy of this order. No costs.

(C.Y.Somayajulu, J.)

Date: 01.04.2005

Cvrk

Note: Office to issue certified

copies in three days.

//B.O.//

cvrk

Note: L.R. copy to be marked - Yes

To

1. One Fair copy to the Hon'ble Sri Justice C.Y.Somayajulu (for His Lordship's kind perusal)

2. The Assistant Medical Officer of Health, Circle No. V, West Zone, MCH, Hyderabad.

3. 2 copies to the Government Pleader for Muncipal Admn. & Urban Dev., High Court Buildings, Hyderabad.

4. 2 CD copies.

5. 8 L.R. copies

6. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

7. The Secretary, A.P. Advocates' Association Library, High Court of A.P., Hyderabad.

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